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BURTON *v.* BURTON.

March 16, 1916.

[88 S. E. 51.]

**Divorce (§ 184 (6)\*)—Appeal—Affirmance—Questions of Fact.**—Where the record on appeal in an action for divorce presents only a question of fact, and the judgment below is supported on that fact by the evidence, it must be affirmed.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. § 572; Dec. Dig. § 184 (6).\* 4 Va.-W. Va. Enc. Dig. 748.]

Appeal from Circuit Court, Augusta County.

Action by Mary Hester Burton against George Marshall Burton. Decree for plaintiff, and defendant appeals. Affirmed.

*Joseph A. Glasgow*, of Staunton, for appellant.

*Carter Braxton* and *Rudolph Bumgardner*, both of Staunton, for appellee.

BAILEY et al. *v.* JOHNSON et al.

March 16, 1916.

[88 S. E. 62.]

**Partition (§ 17 (2)\*)—Jurisdiction—Adverse Claim.**—Under Code, 1904, § 2562, permitting courts of equity having jurisdiction in cases of partition to take jurisdiction of all questions of law affecting the legal title that may arise in any proceedings as well between tenants in common, joint tenants and coparceners as others, a court of equity cannot, partition of lands having been decreed and the premises sold, thereafter open the suit to entertain a petition by adverse parties asserting a title paramount in no way connected with or affecting the source of title under which the original parties claimed to be owners.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 54-59; Dec. Dig. § 17 (2).\* 10 Va.-W. Va. Enc. Dig. 777.]

Appeal from Circuit Court, Sussex County.

Bill by Peter Bailey and others against Hager Johnson and others for the partition of land under which the land was ordered sold for division. George Cypress and others were allowed to come in as parties filing their petition that they were the true owners of the land, and from a decree sustaining the claim of petitioners setting aside the sale and deeds to the purchasers and directing a new sale, the original complainants

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and purchasers appeal. Reversed and annulled, and petition dismissed.

*M. G. Mason*, of Sussex Courthouse, and *Wm. B. Cocke*, of Stony Creek, for appellants.

*Robert W. Arnold*, of Waverly, and *J. Gordon Bohannon*, of Petersburg, for appellee.

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BOARD OF SUP'RS OF PRINCE WILLIAM COUNTY et al. v.  
MANUEL et al.

March 16, 1916.

[88 S. E. 54.]

**1. Highways (§ 115\*)—County Commissioners—Liability of.**—Where the superintendent of roads under the orders of the board of supervisors to work a road invaded complainants' premises, attempting to forcibly widen the road, the board of supervisors is not liable, although the superintendent is liable.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 358-370, 372, 373; Dec. Dig. § 115.\* 12 Va.-W. Va. Enc. Dig. 930.]

**2. Damages (§ 138\*)—Injury to Property—Excessive Recovery.**—Where the superintendent of roads, in arbitrarily attempting to widen a highway, uprooted over 100 ancient ornamental cedar trees, which defined the boundary of complainants' land, destroyed their old worm fence, and made extensive excavations on their land, an award of \$225 is not excessive.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 397, 398; Dec. Dig. § 138.\* 4 Va.-W. Va. Enc. Dig. 202.]

**3. Highways (§ 14\*)—Title to Highways—Prescription.**—While title to a road may be acquired by the public by prescription, the right rests on usage, so the public acquires title only to land used for road purposes for the prescriptive period.

[Ed. Note.—For other cases, see Highways, Cent. Dig. § 21; Dec. Dig. § 14.\* 12 Va.-W. Va. Enc. Dig. 862.]

Appeal from Circuit Court, Prince William County.

Bill by Emma Manuel and another against the Board of Supervisors of Prince William County and other individual defendants. From a decree for complainants against the individual defendants, they appeal, and complainants assign cross-errors. Amended and affirmed.

*Thos. H. Lion*, of Manassas, for appellant.

*H. Thornton Davies* and *R. A. Hutchison*, both of Manassas, for appellees.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.